IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

WP(C).No. 26584 of 2007(M)

PETITIONER:

M/S. KIDDE INDIA LIMITED,
HAVING ITS OFFICE AT 4614, LUCKY STAR BUILDING,
SECOND FLOOR, MARKET ROAD, ERNAKULAM, KOCHI-31,
REPRESENTED BY IT'S FINANCE DIRECTOR,
DEVENDRA MEHTA.

BY ADV. DR.K.B.MUHAMED KUTTY (SR.)
SRI.K.M.FIROZ

RESPONDENTS:
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1. THE COMMERCIAL TAX OFFICER,
KVAT CIRCLE III, ERNAKULAM.

2. THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, SALES TAX COMPLEX, ERNAKULAM.

3. M/S. BHARATH PETROLEUM CORPORATION LTD.,
KOCHI REFINERIES, AMBALAMKUGAL-682 302.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V. GIRI, J.

W.P.(C). NO. 26584 OF 2007

Dated this the 11th day of September, 2007

J U D G M E N T

Ext.P4 order rejecting the petitioner's application for compounding under Section 8 of the KVAT 2003, is under challenge in this writ petition. The order is appealable under Section 55 of the said Act. In as much as the petitioner has been prosecuting the challenge against Ext.P4, including by way by way of the present writ petition, if the petitioner files an appeal before the competent authority within two weeks from today, the appeal will be treated as within time and shall be disposed of, after hearing the petitioner, within two months thereafter.

2. Dr. K.B.Mohamedkutty, learned Senior Counsel for the petitioner further submitted that amounts are due to the petitioner as the contractor of the Bharat Petroleum Corporation Ltd, the 3rd respondent. The payment of amount due has not been made by the employer namely the 3rd respondent on the premise that the total amount of tax that may have to be realised from the petitioner has not been quantified so far. It will depend upon whether the

compounding application will ultimately be allowed by the Department or not. Apparently out of the amounts as and when they have fallen due, an amount of Rs.5 crores has already been released.

3. I have heard the learned counsel on behalf of the 3rd respondent as well.

4. As and when orders are passed by the appellate authority on the appeal to be preferred by the petitioner against Ext.P4, the same shall be produced before the 3rd respondent and depending upon whether compounding is allowed or not, 3rd respondent may after collecting appropriate details from the petitioner, determine appropriately the tax that could fall due and then proceed in accordance with the terms of the contract for release of the amounts as and when they fall due. The dispute regarding petitioner's entitlement for payment of tax on works contract under the compounding system need not be treated as a reason for deferring discharge of contractual obligations by the parties concerned.

Subject to the above observations, the writ petition is disposed of.

V. GIRI, JUDGE

vps

ANTONY DOMINIC, JUDGE

OP NO.16383/98

JUDGMENT

5TH SEPTEMBER, 2007